IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.1595 OF 1986

Maharashtra General Kamgar Union ..Petitioner.
Vs.
Ilac Limited & anr. ..Respondents.

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Dr. R.S. Kulkarni with Mr. Abhay Kulkarni for the Petitioner.
Mr. M.S. Topkar for Respondent No.4.

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CORAM: DR. D.Y. CHANDRACHUD, J.

24th August, 2006.

ORAL JUDGMENT :

1. These proceedings under Article 226 of the Constitution arise out of an order passed by the Industrial Court on 30th April, 1986 by which two complaints of unfair labour practices under items 1, 2, 5 and 6 of Schedule II and items 9 and 10 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 came to be dismissed.

2. The First Respondent was engaged in the manufacture of PVC material. Some time prior to 1983, the management closed down its factories purportedly on the ground of adverse import

conditions. The Government refused to grant permission for closure under Chapter VB of the Industrial Disputes Act, 1947. A lay off commenced on 23rd May, 1985 which admittedly was never lifted or withdrawn at any stage. On 29th May, 1985 the company sought permission of the Commissioner of Labour under Section 25M of the Industrial Disputes Act, 1947 to lay off the workmen with effect from 23rd May, 1985 on the ground of a shortage of electric supply. By an order dated 25th July, 1985 the application was rejected by the Deputy Labour Commissioner on the ground that there was no shortage of electric power and that in fact the company had, despite opportunities, failed to pay the bills of Tata Power Company consequent upon which power supply had been disconnected. The Deputy Commissioner of Labour held that the provisions of Section 25M were not attracted because there was no shortage of power supply and a disconnection for non-payment of bills could not be equated with a shortage of power supply. The company applied for a reference to the Tribunal but the application was rejected. There was then a suspension of work on 23rd October, 1985 and a lock out was declared with effect from 7th November, 1985.

3. The order of the Deputy Commissioner of Labour dated 25th July, 1985 refusing permission to the company to lay off the workmen working in the six factories was challenged in writ proceedings before a Division Bench of this Court. By a judgment and order dated 7th June, 1995 delivered in **Ilac Ltd. v. Union of India**[1] the Division Bench dismissed the Petition. The Division Bench, held that the facts of the case indicated that right from the year 1981 attempts were made to close down the company on one pretext or the other. Initially a closure was sought in 1981 on the basis that imports of raw material were not available. Closure permission was refused. The First Respondent came on the scene in 1985. The company laid off the workmen on the ground that it was not in a position to pay electricity dues since the electric company had increased fuel charges. Mr. Justice S.H. Kapadia (as His Lordship then was) speaking for the Division Bench held that this was not a case involving a shortage of electric supply as contemplated by Section 25M since it was on account of the non-payment of electricity bills of Tata Power Company that the situation had arisen. The Court held that the Deputy Labour Commissioner was not concerned with the plea of the company

1 1995 II CLR 313.

that the increase in fuel adjustment charges, which were statutory, was arbitrary. Moreover, from the record it emerged that both the Government and the electric company had furnished concessions and an opportunity to the company to meet its outstanding dues but, the company had failed to do so upon which electric supply was disconnected. There was a clear and express finding of the Division Bench that the conduct of the management was malafide and with a view to defeat the entitlement of the workers. The Division Bench held as follows :

> "In fact, the entire exercise resorted to by the Company was malafide. It was only to defeat the rights of the workmen. Non-payment of electricity charges cannot be the ground to effect lay-off. The malafide intentions of the Company are borne out also by letter dated 23.1.1985 i.e. much prior to effecting lockout in May 1985. This letter is addressed by the Company to Tata Power Company requesting Tata Company to disconnect the electricity Supply. Further despite concessions being given both by the Government and Tata Company payments were not effected. This clearly shows that lay-off was only a subterfuge. In the above facts, there was no lay-off. In the circumstances, Deputy Commissioner of Labour was right in rejecting the permission. When the Company realised that the permission is refused, they applied for reference to the Industrial Tribunal on 25.7.1985 which has been rightly rejected by the Deputy Commissioner of Labour vide impugned order dated October 30, 1985 on the ground that he has considered the entire case on merits vide order dated 25.7.1985. Further it may be mentioned that normally this Court is inclined to grant references to the Government. However, in the present case we find that

> the Company has resorted to various tactics only to defeat the rights of the employees. Initially, they resorted to closure. Having failed, they resorted to lay-off, which, as stated hereinabove never existed in the eyes of law. Shortage of raw material or power supply in appropriate cases may result in lay-off but in the present case that is not so. In the present case, there is no evidence to show shortage of power supply. On the contrary, the Company brought about a situation by not paying the electricity charges and, thereafter, they have imposed the alleged lay-off. In the circumstances, the entire exercise is malafide action and in the circumstances we do not wish to interfere under Article 226 of the Constitution."

4. The Division Bench has observed that since separate proceedings were pending in regard to the lockout that was imposed by the company, no opinion was being expressed in regard to those proceedings. However, the judgment of the Division Bench emphatically reveals that there was a concerted effort on the part of the company right from 1981 to close down operations on some pretext or the other. The lock out was effected in May 1985 but, much prior to that on 23rd January, 1985 itself, the company had called upon Tata Power Company to disconnect the electric supply. It was this fact which was noted by the Division Bench when it came to the conclusion that the conduct of the company was malafide; that the lay off was only a subterfuge and

the conduct of the management was motivated only by a desire to defeat the rights of the employees. An attempt to close down the undertaking was made and when that failed, there was an attempt to lay off the workmen. The lay off permission having been refused recourse was taken to the expediency of declaring a lockout.

5. The Industrial Tribunal was moved in a complaint of unfair labour practices under items 1, 2, 5 and 6 of Schedule II and under items 9 and 10 of Schedule IV. The findings of the Industrial Court that items 1, 2 and 5 of Schedule II and item 10 of Schedule IV are not attracted is not seriously questioned and correctly so. Item 1 of Schedule II deals with the interference with or a restraint upon the exercise of the right of employees to organize or assist a trade union and to engage in trade activities for the purposes of collective bargaining. Item 2 similarly, deals with an unfair labour practice of an employer dominating, interfering with or contributing, support – financial or otherwise to any union. Item 5 is to refuse to bargain collectively, in good faith, with the recognized union. These items are not attracted and there is no evidence that there was an unfair labour practice thereunder. Similarly item 10 of Schedule IV relates to an employer indulging in an act of force or

violence on which, again, there is no evidence.

6. The real basis of the complaint was item 9 of Schedule IV under which the unfair labour practice lies in a failure to implement an award, settlement or agreement and item 6 of Schedule II under which an unfair labour practice lies in proposing or continuing a lock out deemed to be illegal under the Act. In so far as item 9 of Schedule IV was concerned, the case of the workmen was that a settlement had been arrived at on 6th September, 1980 with the management under which the terms and conditions of service were revised. The contention of the workmen was that the management had resorted to the subterfuge of a closure, lay off and a lockout - each in succession - with a view to avoid compliance with the terms of the agreement dated 6th September, 1980. Further more, it was submitted that as a result of the unlawful act of the management in initially declaring a lay off and thereafter taking recourse to a lockout, the workers were deprived of their just entitlement under the settlement of 6th September, 1980.

7. The Tribunal negatived the contention of the workmen that a breach of the settlement dated 6th September, 1980 would

amount to a violation of item 9 of Schedule IV. The first reason which the Tribunal indicated in support of this conclusion was that the agreement which was entered into between the management and the representative of the workmen was at the instance of the then Chief Minister of the Maharashtra and that it was neither registered nor placed before the Industrial Tribunal or the Commissioner of Labour, Mumbai. There is merit in the submission which has been urged on behalf of the workmen that in holding that the agreement dated 6th September, 1980 could not be termed as a settlement or an award, the Tribunal has rendered a finding which is directly in the teeth of a binding judgment of a Division Bench of this Court. A dispute between Ahmedabad Manufacturing & Calico Printing Co. Limited and its workmen came up ultimately for determination before a Division Bench of this Court. In the judgment of the Division Bench in **Ahmedabad Manufacturing and Calico Printing Co. Limited and Workmen**[2] the submission that the agreement dated 6th September, 1980 was not a settlement within the meaning of Section 2(p) of the Industrial Disputes Act, 1947 was specifically raised and negatived. The Division Bench consisting of Chief Justice V.S. Deshpande and

2 1983 I LLJ 367.

Mrs. Justice Sujata Manohar, (as the Learned Judge then was) held as follows :

> "Mr. Mehta, for the Company, argued that the question of any settlement being a substitute for the award cannot arise in this case as (1) the same is never filed in this Court or in the Supreme Court when the appeal was then pending nor the Court was called upon to pass a decree in terms thereof. In fact, says, Mr. Mehta, the agreement was referred to cursorily in the course of the arguments before Desai J. and placed on record at that stage, (2) the requirements of even S. 2(p) of the Industrial Disputes Act also are not complied with to attract the legal effect contemplated under the said Act and (3) no steps to formalise the same were taken as required under cl. 12 of the agreement. None of these factors, to our mind, can affect the legal validity of the settlement and its operation as a substitute for the award. The agreement was placed on the record by Desai J. without any objection from any party. The factum of the settlement is not in dispute nor the fact that it is being still acted upon. In fact, all arrears from 1965 have been paid to the workmen in terms thereof. Non-compliance with S.2(p) of the Industrial Disputes Act in these circumstances, is of no significance nor the fact that the Court has not passed any decree in terms thereof. The settlement would continue to be binding for two years and afterwards till it is terminated and fresh arrangements are arrived at. Even otherwise the reference and the award had become irrelevant in the swiftly changing situation after 1971.

This judgment of the Division Bench which was with regard to the same settlement dated 6th September, 1980 concluded the question as to the nature and enforceability of the settlement. The

Tribunal could not have taken a view at variance with the decision of the Division Bench.

8. The Tribunal was also of the view that the term of the settlement was two years and on the date when the complaint was filed in October 1984, the settlement of 6th September, 1980 could not be regarded as being in operation. The view which the Tribunal has formed is ex facie contrary to the judgment of the Division Bench of this Court which is noted above. Besides, the Tribunal has disregarded the plain position in law under Section 19 of the Industrial Disputes Act, 1947. It is now a settled principle of law that an industrial settlement or award continues to remain binding during the tenure of its operation; thereafter even upon its expiry, until it is replaced by another settlement or award. For that matter, despite even a termination of a settlement, there cannot be a vacuum in service conditions and until the settlement is replaced by an award or another settlement, its provisions will govern. This principle has been affirmed by the judgment of the Supreme Court in **L.I.C. v. D. J. Bahadur**[3]. In these circumstances, there is merit in the grievance of the workmen that the basis on which the

3 1980 Lab.I.C. 1218 (SC).

Tribunal came to the conclusion that the agreement dated 6th September, 1980 was not a settlement within the meaning of item 9 of Schedule IV and that the settlement ceased to remain in force on the expiry of its term of two years is entirely specious. The effect of the conduct of the management which has been found to be malafide and to be a subterfuge, in a binding judgment of a Division Bench of this Court, is that as a result of the actions of the employer the workers were disabled from receiving the benefit of the settlement dated 6th September, 1980 to which they were otherwise lawfully entitled. The Division Bench, it needs reiteration, found that the subterfuge that was resorted to by the management was only with a view to defeat the just entitlements of the workmen.

9. During the pendency of the proceedings, the Respondent companies were taken into liquidation and the Official Liquidator appointed by the Gujarat High Court has been brought on the record. Counsel appearing for the Official Liquidator who has assisted the Court sought to rely upon the judgment of the Supreme Court in **Savita Chemicals Pvt. Ltd. v. Dyes & Chemical**

Workers Union[4]. That was a case where a settlement was arrived at between the management and the workmen on 8th March, 1982 to cover inter alia demands in the matter of privilege leave and medical check ups. The union served a demand on the management proposing to proceed on a strike at the expiry of 14 days from the date of service of the strike notice. The management moved the Labour Court seeking a declaration that the workmen had gone on an illegal strike. The Labour Court held that the letter of the union was not a strike notice as contemplated by Section 24(1) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 and declared that the strike was illegal. A Learned Single Judge of this Court allowed the Petition filed by the union and set aside the order of the Labour Court. The management carried the matter in appeal to the Supreme Court. The Supreme Court held that under Section 24(1)(i) of the Act an illegal strike is a strike which is commenced or continued during any period during which any settlement or award is in operation in respect of any of the matters governed by the settlement or award. The Supreme Court found that the strike notice, however, was not in respect of any matter covered by the

4 1999 I CLR 379.

settlement, but recited an entirely different grievance. This grievance in the strike notice did not pertain to any modification of the crystallised rights regarding privilege leave granted to the workmen under the settlement but, pertained to an entirely different grievance based on a situation which was subsequent to the settlement of rights and obligations regarding privilege leave between the parties. The judgment of the Supreme Court in **Savita Chemicals** thus determines as to when a strike can be regarded as illegal within the meaning of Section 24(1)(i) of the Act. Undoubtedly, there is a similar provision in Section 24(2)(h) relating to an illegal lockout. In the present case, however, the grievance of the workmen both before the Industrial Court and this Court is that the management had committed a breach of item 9 of Schedule IV, consequent upon the non disbursal of benefits to the workmen under the settlement of 6th September, 1980. The management disabled itself from complying with the settlement by its malafide acts of resorting to one subterfuge after another of depriving the workmen of their dues under the settlement. Such conduct of the management would clearly amount to a violation of item 9 of Schedule IV as explained in the judgment of the Supreme Court in **S. G. Chemicals and Dyes Trading Employees Union and**

S.G. Chemicals and Dyes Trading Limited[5]. The Supreme Court, while expressly disapproving the judgment of a Single Judge of this Court in **Maharashtra General Kamgar Union v. Glass Containers Pvt. Ltd.**[6] held as follows :

> "It is an implied condition of every agreement, including a settlement, that the parties thereto will act in conformity with the law. Such a provision is not required to be expressly stated in any contract. If the services of a workman are terminated in violation of any of the provisions of the Industrial Disputes Act, such termination is unlawful and ineffective and the workman would ordinarily be entitled to reinstatement and payment of full backwages. In the present case, there was a Settlement arrived at between the Company and the Union under which certain wages were to be paid by the Company to its workmen. The Company failed to pay such wages from 18th September, 1984, to the eighty-four workmen whose services were terminated on the ground that it had closed down its Churchgate Division. As already held, the closing down of the Churchgate Division was illegal as it was in contravention of the provisions of S.25-O of the Industrial Disputes Act. Under sub-s. (6) of S.25-O where no application for permission under sub-s.(1) of S.25-O is made, the closure of the undertaking is to be deemed to be illegal from the date of the closure and the workmen are to be entitled to all the benefits under any law for the time being in force, as if the undertaking had not been closed down. The eighty-four workmen were, therefore, in law entitled to receive from 18th September, 1984, onwards their salary and all other benefits payable to them under the Settlement dated 1st February, 1979. These not having been paid to them, there was a failure on the part of the Company to implement the said Settlement and consequently the Company was guilty of

5 1986 I LLJ 490.
6 1983-I LLJ 326.

> the unfair labour practice specified in Item 9 of Schedule IV to the Maharashtra Act, and the Union was justified in filing the complaint under S.28 of the Maharashtra Act complaining of such unfair labour practice."

10. The restraints on the Industrial Court when dealing with a complaint of unfair labour practices under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 particularly in the context of the justifiability or otherwise of a lockout have been emphasized in the judgment of the Division Bench in **Modistone Ltd. v. Modistone Employees' Union**[7]. The Division Bench has held that while deciding a complaint under the Act, the Industrial Court can (i) decide whether the lockout is legal or illegal i.e. whether it is in accordance with the provisions of the Act; (ii) decide whether the reasons stated in the notice of lockout are non existent or sham or irrelevant or not germane to the employer-employee relationship. However, it has been held that the Industrial Court cannot go into the question of the sufficiency or adequacy of reasons nor can the Industrial Court go into the question as to whether the lockout is justified. Thus, according to the interpretation of the law by the Division Bench it is open to the Industrial Court to determine as to whether the reasons

7 2001 I CLR 1009.

stated in the notice of lockout are non existent, sham or irrelevant.

11. The finding of the Division Bench in the earlier decision in **Ilac Limited** (supra) has already been adverted to. Evidence has also emerged on the record of these proceedings. The Industrial Tribunal has noted that during the cross examination of the witness for the management, it was squarely admitted that if the lay off application would have been granted by the Government, the management might not have been required to issue notices for suspension of activities and lockout. There is merit in the submission urged on behalf of the Petitioner that this admission of the witness disclosed the real intention of the management in proceeding to declare a lockout.

12. In view of the aforesaid finding that has been arrived at in regard to a breach of item 9 of Schedule IV, it is not necessary to render a conclusive determination on the maintainability of the complaint under item 6 of Schedule II. Item 6 of Schedule II covers a situation of a lock out which is deemed to be illegal. In view of the judgment of the Division Bench of this Court in **Maharashtra**

General Kamgar Union v. Balkrishna Pen Pvt. Ltd.[8] it is now a settled principle of law that before a strike or a lockout can be deemed to be illegal, it is necessary for the Industrial Court to first decide whether the strike is legal or illegal and if it comes to the conclusion that it is illegal to make a declaration of the said fact in the open Court. The Court will then have to give 48 hours for the withdrawal of the strike or, as the case may be, lockout and if it is not withdrawn during the period, it will have to proceed to decide whether it is deemed to be illegal under the Act. What applies to strikes will equally apply to lockouts. In the present case, there is now no question of the Industrial Court being directed to issue a declaration of the illegality of the lockout, furnishing notice for the withdrawal of the lockout followed by the operation of the deeming fiction, since the company has been directed to be wound up in pursuance of an order dated 15th July, 1998 of the Gujarat High Court. In these circumstances, fairly, counsel appearing for the Petitioner union has not pressed his arguments any further in regard to the unfair labour practice under item 6 of Schedule II.

13. For the reasons already indicated, I am of the view that

8 1987 1 CLR 374.

the order passed by the Industrial Court dismissing the complaint of unfair labour practices is unsustainable and will have to be quashed and set aside. The management is held accordingly guilty of an unfair labour practice under item 9 of Schedule IV. As a result of the malafide conduct of the management, the workers have been deprived of their just entitlements under the industrial settlement by which the terms and conditions of service were revised. The Court has been informed that a large number of workmen have expired in the meantime.

14. The workmen would in these circumstances be entitled to all consequential benefits to which they would have been entitled under the law in accordance with the terms of the industrial settlement until the date of liquidation viz. 15th July, 1998. The order of the Industrial Court is accordingly quashed and set aside. The Petition shall stand disposed of in the aforesaid terms.